

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte REINHOLD G. GRELLMANN
and DANIEL M. MCCABE

Appeal 2007-0058
Application 10/713,600¹
Technology Center 2100

Decided: May 1, 2007

Before: KENNETH W. HAIRSTON, ALLEN R. MACDONALD
and JAY P. LUCAS, *Administrative Patent Judges.*

Lucas, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal from a final rejection of claims 1-6 under authority of 35 U.S.C. § 134 (2002). The Board of Patent Appeals

¹ Application was filed November 13, 2003. This application is a continuation of 09/534,143, filed on 03/23/2000, now abandoned. The real party in interest is ATL Ultrasound, Inc.

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and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellants' invention relates to a system for communicating with a medical diagnostic ultrasound system from a remote distance. In the words of the Appellant:

An embodiment of the present invention enables many ultrasound systems at many geographically diverse hospitals and clinics to be serviced, maintained, and upgraded by servicepersons in the field equipped with portable diagnostics computers. The capability of the portable computers is continually improved by receiving support and new maintenance and repair methods and software from a central location.

(Brief 4, second paragraph).

Claim 1 is exemplary:

1. A distributed ultrasound diagnostics network for diagnosing the functionality of an ultrasound system comprising:
 - a plurality of diagnostics computers for diagnosing the functionality diagnostics software which are operated by servicepersons to download ultrasound system functionality diagnostic information from ultrasound systems; and
 - a central diagnostics location with which said diagnostics computers periodically communicate to transfer said ultrasound system functionality diagnostic information,whereby said central diagnostic location is repository for ultrasound system repair, maintenance, or quality improvement diagnostic information obtained by said diagnostic computers from a plurality of ultrasound systems.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Wood

US 5,851,186

Dec. 22, 1998

The Examiner rejected claims 1-6 under 35 U.S.C. § 102(b) for being anticipated by Wood. The Examiner indicated that claim 7 would be allowed if placed in independent form.

Appellants contend that the subject matter of claims 1 to 6 is not anticipated by Wood for reasons to be discussed more fully below. The Examiner contends that the claims are properly rejected.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Briefs and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004).²

We reverse the rejection.

ISSUE

The issue is whether Appellants have shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 102(b). The issue turns on whether all of the claimed limitations are to be found in the reference, the patent to Wood. More specifically, the

² Appellants have not presented any substantive arguments directed separately to the patentability of the dependent claims or related claims in each group, except as will be noted in this opinion. In the absence of a separate argument with respect to those claims, they stand or fall with the representative independent claim. *See In re Young*, 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991). *See also* 37 C.F.R. § 41.37(c)(1)(vii).

issue revolves around whether Wood teaches a central diagnostic location being a repository for ultrasound system repair, maintenance or quality improvement diagnostic information.

FINDINGS OF FACT

Findings with respect to the rejection of claims 1-6 under 35 U.S.C. § 102(b).

1. The reference Wood presents a medical ultrasonic diagnostic imaging system which is capable of being accessed over data communication networks such as the Internet. The Examiner indicates that the claimed diagnostic computers are read on the laptop computers of the servicemen disclosed in Column 11, lines 14 to 28. (Examiner's Answer 3). The Examiner further indicates that the claimed central diagnostics location is read on the use of the HDI Server for storage of diagnostic results, as disclosed in Column 12, lines 66-67 and column 13, lines 1-8. (Examiner's Answer 3).
2. A careful reading of the claims in view of the issues raised in the Brief and Answer indicate the key limitation of claim 1 to be "...whereby said central diagnostic location is a repository for ultrasound system repair, maintenance, or quality improvement diagnostic information obtained by said diagnostic computers from a plurality of ultrasound systems."

3. In Appellant's Reply Brief, in Examiner's Answer to the Reply Brief, and in Appellant's Supplemental Reply Brief the issue is joined on whether Wood does, or does not disclose the claimed "ultrasound system repair, maintenance or quality improvement diagnostic information...from a plurality of ultrasound systems" residing on his Centralized Server #234.
4. The text in question, column 12, line 66 ff, reads as follows:

An advantage of the local network is that all systems on the network can utilize the local server to store ultrasound images and patient reports, making them accessible to remotely located diagnosing physicians even when the ultrasound systems are not in operation. When all of the network's ultrasound systems use the HDI Server 234 for storage of their diagnostic results, all of this information will be accessible over the Internet even when the ultrasound systems are disconnected for use elsewhere or turned off at the end of a day. A remote user terminal can connect to the HTTP server 30 of the HDI Server 234 and, at the homepage of FIG. 11, click on the HDI Server graphic 234 to take the remote user to the patient directory Web page shown in FIG. 13. This patient directory page lists the names of all patients. with reports or images stored on the local network HDI Server 234, and the identity of the ultrasound system on which the patient was examined. The remote terminal user can click on a patient's name to access the reports and ultrasound images from that patient's exams, or delete the patient's records from the HDI Server 234 after they have been reviewed by the physician or archived. (emphasis added)

5. Reviewing the text in question, we find that the diagnostic results referred to in the second sentence are medical diagnostic results from the ultrasound processing of patients, intended to be reviewed by a diagnosing physician at a remote terminal. From this paragraph, and from a careful reading of the entire patent, we do not find in Wood a teaching of the claimed system diagnostic information being stored in a central location, as claimed.

PRINCIPLES OF LAW

On appeal, Appellant bears the burden of showing that the Examiner has not established a legally sufficient basis for the rejection of the claims.

“In reviewing the [E]xaminer’s decision on appeal, the Board must necessarily weigh all of the evidence and argument.” *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. *See In re King*, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

ANALYSIS

Appellants contend that Examiner erred in rejecting claims 1-6 under 35 U.S.C. 102(b). Reviewing the findings of facts cited above, we conclude that Examiner has erred in rejecting these claims under Wood, as an essential element of the independent claim 1 is missing from the reference.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that the Examiner erred in rejecting claims 1-6. The rejection of those claims is reversed.

DECISION

The Examiner's rejection of claims 1-6 is Reversed.

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REVERSED

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